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ABSTRACT

This publication contains documents 1 through 4 of a briefing kit on the United Nations' anticipated Convention on the Rights of the Child. Document 1 discusses the human rights of children. Document 2 describes the anticipated convention and the process through which it was organized. Document 3 discusses the convention in terms of how it is expected to improve children's rights. Document 4 describes the implementation mechanism of the convention. Appended materials include a list of nongovernmental organizations that participated in an ad hoc group on the drafting of the convention, a descriptive flyer on the rights of the child, and the official text of the draft convention as of March, 1989. The convention is expected to set universally agreed standards for the protection of children and to provide an invaluable framework for advocacy on behalf of children and families and for the development of programs and policies that will ensure a healthier and safer future for children in every country. (RH)

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DCI/UNICEF Briefing Kit
THIRD EDITION — MAY 1989

The future United Nations

Convention on the Rights of the Child

Document No. 1

The human rights of children

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Why special rights for children?

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The conceptualisation of global children's rights at the international level dates back to the "Geneva Declaration" of 1924. This five-point text, drawn up by the then "Save the Children Fund International Union", was taken on board by the League of Nations. It was expanded in succeeding years into the basis for what was to become the Declaration on the Rights of the Child adopted by the General Assembly of the United Nations in 1959.

In relation to human rights provisions in general, rights accorded to children may:

- reaffirm or reflect rights granted to human beings of whatever age, e.g. protection from torture, the right to a name and nationality, the right to social security.
- improve, with regard to children, the standards applicable to human beings in general, e.g. special conditions of employment, administration of juvenile justice, conditions of deprivation of liberty.
- address issues that are solely or more especially relevant to children, e.g. adoption, primary education, contact with parents.

Most of the "human rights of children" fall into the second and third of the above categories: they raise the standard of, or add to, rights afforded to human beings in general. They do so in order to take account of the particular needs of children as especially vulnerable, essentially dependent and developing human beings.

All kinds of rights

Human rights are traditionally classified under five headings: civil, political, economic, social and cultural. Although special, children's rights are an integral part of human rights, and they can also be classified in this way. Thus:

- the civil and political rights of children include the right to a name and nationality, freedom of expression and association, protection from torture and maltreatment, special rules governing the circumstances and conditions under which children may be deprived of their liberty or separated from their parents, etc.;
- the economic rights of children include the right to benefit from social security, the right to a standard of living adequate to ensure proper development, and protection from exploitation at work;
- the social rights of children include the right to the highest attainable standard of health and access to medical services, the right to special care for handicapped children, protection from sexual exploitation and abduction and the regulation of adoption;
- the cultural rights of children include the right to education, access to appropriate information, recreation and leisure, and participation in artistic and cultural activities.

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Mutual reinforcement

In fact, the Convention makes no distinction between these different "kinds" of rights. On the contrary, by grouping them all together in one instrument, the attempt has been made to demonstrate their necessary inter-dependence and integrated nature if one is to enable children to fulfil their potential. The rights in the Convention are interwoven and mutually reinforcing. In other words, it is both pointless and reprehensible to ensure, say, that a child is adequately nourished (a social right) if he or she is not protected from arbitrary detention (a civil right), and a child has to be protected from exploitation at work (a socio-economic right) if he or she is to be able to benefit from education (a cultural right).

This is why there is a growing movement away from the "traditional" breakdown of rights and towards other classifications useful for analysing whether or not specific standards — and practices — are appropriate and adequate in meeting the needs of children. One such classification talks of rights related to survival, development, protection and participation. Again, the aim is not to prioritise the rights contained in any particular category, but to describe in the most pertinent manner the overall range of needs that rights have to address.

Survival, development...

Thus, "survival rights" might include nutrition, adequate standard of living and access to medical services. These are the basic rights that ensure that a child may quite simply live, but as such they are only necessary, not sufficient.

To them must be added "development rights", such as access to information, education and cultural activities, opportunities for rest, play and leisure, and the right to freedom of thought, conscience and religion.

...protection and participation

The child also has to be assured "protection" — not only from the violation of the above rights, but also from all kinds of exploitation and cruelty, arbitrary separation from family, and abuses in the justice and penal systems. Some categories of children need special protection: the handicapped, refugees and those without a family. In addition the Convention acknowledges that society must be specially vigilant to ensure that the rights of minority children and indigenous children to their language and culture are respected.

Finally, it is important to ensure that the child has "participation" rights. These cover two areas: the right to express opinions freely and to have those opinions taken into account in matters affecting the child's own life; and the right to play an active role in the community and society, through freedom of association and other activities.

It is worth noting in passing, at this point, that this classification method clearly demonstrates the fallacy behind the criticism sometimes leveled against the concept and content of children's rights — that they are essentially paternalistic and over-protective. Protection is only one element among others as a basis for children's rights. Indeed, protection is a feature that is as important in overall human rights provisions, and in those concerning special groups such as ethnic, linguistic or religious minorities, as it is with regard to children.

"Universal" rights?

The question is often posed as to the extent to which human rights can be truly universal, given the wide range of socio-economic, religious and cultural realities throughout the world. Is it possible and useful, then, to set out standards that are applicable and applied worldwide? The problem is apparently compounded when it comes to the human rights of children. First of all, there is the fact of significantly divergent perceptions from one country to another regarding the age at which childhood ends and the child's role in the family and in society. And

then there is the fact that methods of upbringing and socialisation vary greatly, which is also seen as a major obstacle to drawing up global rules governing the treatment of children. Is the formulation of an international set of children's rights a feasible and worthwhile proposition?

In fact, the future Convention necessarily allows for local and cultural interpretations of "universal rights", provided the best interests of the child are safeguarded. Notwithstanding differences in culture, ideology and level of economic wealth, however, a whole range of children's rights are fundamentally shared by all peoples. Ways of achieving them may differ, and they may individually require or be given different priority according to time and place, but they remain indivisible pre-conditions for the child's harmonious and full development.

■ An integral part of human rights law

The future Convention will constitute the most comprehensive list possible of what the international community believes those fundamental rights to be. It will set an upper age limit for childhood, but equally will allow for exceptions for countries where the age of majority is set lower. It will not go into detail about, for example, how parents should bring up their children, but it will stipulate that children have the right to receive care and protection from their families and the State, and will set out the areas in which that care and protection is to be provided. For, whatever the country or the community, its reaction is the same when children are subjected to torture, are unjustifiably separated from their families, do not receive adequate nutrition or proper medical care, are deprived of a basic education vital for their future lives, are maimed for life as a result of exploitation, or are killed in armed conflicts. These are the kind of situations that the Convention attempts to address by setting out clearly the obligations of those States that ratify it and providing the backdrop for international solidarity and cooperation to foster compliance with them. These are also the kind of situations to which children throughout the world fall victim every day. The Convention will give a solid basis and, hopefully, an unprecedented impetus, for taking action to tackle them. In addition, it will set children's rights firmly where they should be: not in opposition or conflict with the rights of adults but an integral and necessary aspect of the body of international human rights law. ■

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The future United Nations

Convention on the Rights of the Child

Document No. 2

The future Convention: How it came about

1924-1959

Logically, the origins of the future Convention on the Rights of the Child can be traced back to the five basic principles for child welfare and protection set out in the "Declaration of Geneva", which was promulgated in 1924 by the then "Save the Children Fund International Union". This first attempt to codify in one text the fundamental conditions to which children had a right was endorsed by the League of Nations that same year. It was revised and amplified in 1948, and the resulting text formed the basis of the ten-point Declaration on the Rights of the Child adopted unanimously by the General Assembly of the United Nations on 20 November 1959.

Declarations and Conventions

As international instruments, declarations are what is known as "soft" law: they are statements of general principles accepted by governments but which carry no specific obligations as such. They contrast with conventions, which are binding, "hard" law, requiring an active decision on the part of individual States to ratify or accede to them. Those "States Parties" to a convention thereby signify their intention to comply with the provisions and obligations it contains. A mechanism for monitoring their compliance is normally established as an integral part of the convention. Attempts to codify global children's rights have until now given rise only to declarations, so no binding international instrument currently exists setting out States' obligations towards children.

Children in human rights law

This being said, alongside the gradual development of universally-accepted principles concerning responses to the special vulnerability, needs and situations of children, the body of international humanitarian and human rights law was also being constituted — and, of course, is continually being supplemented. This "body" comprises a wide range of instruments. Some are binding — although only on those governments that ratify them —, such as the Red Cross Geneva Conventions, the ILO Conventions, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. Others are non-binding — for example, the Standard Minimum Rules for the Treatment of Prisoners, the Principles of Medical Ethics and, of course, the Declaration on the Rights of the Child itself. Many of the provisions of both the binding and non-binding texts in fact apply implicitly to children (by virtue of the latters' status as human beings) or make specific and explicit reference to the child. Indeed, one can identify over 80 international instruments that concern, in one way or another, the situation of children, and many of these are binding. At the same time, because these texts have been drawn up separately over a sixty-year period and without any overall and special concern for children's global needs, the rights they grant contain a number of inconsistencies and, in particular, are far from being comprehensive. In addition, those provisions that are not child-specific, whilst being

applicable to children, do not take account of the latters' special needs which often require in principle the setting of standards that are higher than for adults. Finally, the instruments in question are, as we have said, a mixture of "hard" and "soft" law, meaning that by no means all the rights they implicitly or explicitly afford to children put any obligations on States.

The need for a Convention

Children's rights are an integral part of human rights, which has as its umbrella text the Universal Declaration of Human Rights adopted in 1948. The International Covenants, which were adopted nearly twenty years later (in 1966), together with certain other texts, are seen as the necessary binding instruments on which the effective promotion and defence of human rights can take place. In the same way as the protection of human rights has and requires a coherent and integrated collection of international legislation, with a global declaration and specific binding instruments, so the defence of children's rights must be founded on an equally consistent and recognisable body of law.

Thus, the future Convention will supplement, and not replace, the 1959 Declaration. It was against this background that the Polish authorities launched their proposal for a Convention on the Rights of the Child on the eve of the International Year of the Child (1979). The initiative thus provided an opportunity and impetus to define more clearly, and to harmonise, human rights standards for children, to fill in the many gaps identified in current provisions, and to set the results of this in-depth reassessment exercise within the context of a single, binding international instrument.

From scepticism to green light

The prospect of a Convention did not, however, secure unanimous support at first. Even if it was not binding, some said, there existed already a declaration on children's rights that had been accepted by — and was therefore presumably applicable to — all States, whereas the Convention could only be invoked with regard to States that ratified it. Those who adopted that position seemed to forget that the Declaration would still be as valid an instrument as it ever was, but for a time they held considerable sway. To their reticence was added the concern that others felt about dealing with children as the "target" of a separate binding human rights instrument. They felt that children's needs could and should be met within the framework of global texts. In this respect, it can be noted that there is indeed a danger inherent in apparently distinguishing between "children" and other human beings. This can be overcome, however, by taking the approach that children have special human rights rather than special rights as opposed to other humans. Furthermore, standards frequently do have to be higher for children than for adults.

The UN Working Group

The supporters of the idea of a Convention finally won the day. In 1979, the Commission on Human Rights decided to set up a Working Group — the "open-ended Working Group on the Question of a Convention on the Rights of the Child" — to review and reformulate the text. This body has normally met immediately before the annual sessions of the Commission, for one week each year at the end of January — except in 1988, when the traditional meeting was exceptionally extended to a two-week period and when the Group met for a further fortnight in November-December for the "second reading".

The Working Group itself was composed of representatives of all the 43 Member States of the Commission. Delegates from any other United Nations member country could also attend as "observers" and participate fully in the debates. Inter-governmental agencies such as ILO, UNHCR and UNICEF, as well as non-governmental organisations (NGOs) in consultative status with the UN Economic and Social Council (ECOSOC) could also be represented and participate fully in discussion of the draft.

The NGO Ad Hoc Group

Several NGOs, jointly and individually, reacted to the original Polish proposals for the draft Convention, but their involvement in the drafting process at the start of the Eighties was sporadic and uncoordinated. Few, indeed, were playing an active role. Some NGO representatives attending the 1983 meeting of the Working Group expressed concern about this state of affairs; they were convinced that their organisations had special knowledge and experience to contribute to the drafting work, but that the opportunity for doing so was being lost. They decided to organise a mid-year "NGO consultation" for interested organisations, aimed at ensuring that NGO input be well-prepared and coherent. There emerged from this first consultation an "NGO Ad Hoc Group on the drafting of the Convention" which thereafter met twice a year to pool its ideas and present clear, unified proposals to the UN Working Group. From the start, Defence for Children International was asked to serve as secretariat for the Ad Hoc Group, which ended up with 50 organisations on its list, over half of which, on average, participated in the twice-yearly consultations *(see Annex I)* and attended the UN Working Group meetings (more than double the number at the 1983 meeting).

The experience of the past six years has shown beyond doubt the worthwhile nature of this NGO initiative. The carefully thought-out proposals put forward by the NGO Group have resulted in a large number of their ideas and concerns — and sometimes entire articles — being taken up by the UN Working Group and incorporated in the draft. In fact during the final debate on the text by the Commission on Human Rights, several delegations stated that the role of NGOs in drafting this Convention set a precedent in terms of impact and input regarding the drafting of an international instrument. And in two consecutive UNICEF Executive Board Resolutions, special recognition was given to the work of the NGO Ad Hoc Group.

From the moment it was set up, the NGO Ad Hoc Group benefited from logistical and other assistance from UNICEF. Since that time, UNICEF itself has slowly but surely become more directly involved in issues relating to the Convention and a forceful advocate for its adoption and ratification.

The three elements of a Convention

There are three main sections to this — and indeed to every other — Convention:

- the preamble, which sets out the major underlying principles of the question that the Convention is tackling;
- the substantive articles, which set out the obligations of those States that ratify it in due course (States Parties) (Part I — Articles 1 to 41);
- the implementation provisions that define how compliance with the Convention is to be monitored and fostered and set out the conditions under which it comes into force (Parts II and III — Articles 42 to 54).

Review, approval... and adoption?

After the Working Group adopted the draft of all three sections, the entire text underwent an in-depth "technical review" within the UN Secretariat, essentially to ensure that it contained no contradictions — within itself or in regard to standards set in other international instruments — and that it was worded in accordance with the terminology of international legal texts. The Working Group then proceeded, from 28 November to 9 December 1988, to the "second reading". At this stage, the members of the Working Group had the opportunity of re-examining the full draft in the light of the review and their own concerns and proposals. Despite lengthy and difficult debates on politically and culturally complex issues including religion, inter-country adoption, armed conflict and legal protection before birth, the Working Group was highly motivated and committed to finalising the draft. The Working Group managed to complete the

"second reading" in order for the text of the "finalised" draft Convention to be submitted to the Commission on Human Rights, which approved it on 8 March 1989 and sent it up to the UN Economic and Social Council (ECOSOC) and thence on the final stage of its journey, i.e. to the General Assembly of the United Nations. From the moment the General Assembly adopts the draft text, the latter becomes a fully-fledged Convention — although it will only enter into force thirty days after the twentieth State has ratified it (article 49).

At the present stage, the only officially unresolved question in the text is to be found in article 43. It relates to the financing of the "Committee on the Rights of the Child" set up to consider the reports submitted by the States Parties. This Committee could be financed either by the regular budget of the United Nations or by the States Parties themselves. The fundamentally divergent opinions on this point could not be resolved in the Working Group nor in the Commission on Human Rights, and it was therefore decided to leave the decision — by a vote if necessary — to a higher body of the United Nations. ■

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Document No. 3

The future Convention: How it improves children's rights

A convention for all children

The Convention on the Rights of the Child is special because, for the first time in international law, children's rights are set out in a treaty which will be binding for those States that ratify it.

Under the Convention, children have their own rights, and are supposed to be active in exercising them in accordance with their growth and evolving capacities.

The Convention contains a number of general provisions aimed at securing the rights of all children in matters of importance to their fundamental needs and interests. In addition, it gives protection to children in specially difficult situations.

The Convention applies to all persons below the age of 18 unless, according to national law, they have attained majority at an earlier age (art. 1).

The provisions of the Convention are based on the principle of non-discrimination. They apply to all children regardless of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status (art. 2).

The Convention gives the child the right to a name and a nationality (art. 7) and states that every child has the inherent right to life (art. 6). States Parties shall ensure the survival and development of the child. Articles 24 and 27 give provisions for securing the right to the highest attainable standard of health and a standard of living adequate for the child's development. Article 26 recognizes the right of the child to benefit from social security.

In the child's best interests...

According to article 3, the best interests of the child shall be a primary consideration in all actions concerning children. In connection with the various provisions of the Convention, the best interests of the child are referred to or further specified by reference to his or her family ties, continuity in the upbringing, and the child's ethnic, religious, cultural and linguistic background (e.g. articles 9, 17, 18, 20, 21, 40).

All children are entitled to the right of parental care and not to be separated from their parents (art. 9), and all applications for family reunification are to be dealt with in a positive, humane, and expeditious manner (art. 10).

If a child is temporarily or permanently deprived of his or her family environment, he or she is entitled to special protection and assistance provided by the State, and alternative care is to be ensured (art. 20). When searching for appropriate alternative care, due attention is to be paid to giving the child an environment as similar as possible to that in which he or she has previously been living. Intercountry adoption should be regarded as a last resort, and adoption of any kind should be undertaken in strict conformity with rules set out by the competent

authorities (art. 21). The Convention also applies to children in situations of armed conflict (art. 38), and refugee children (art. 22).

In the text of the Convention, there are several provisions to protect children from all kinds of exploitation, especially sexual and economic exploitation (articles 32-36) as well as guidelines for recovery and reintegration in cases where children have actually been the victims of cruelty or exploitation (art. 39).

A number of provisions deal with the right to education and the objectives of education (articles 28 and 29). At the same time, the Convention also makes it clear that children have a right to leisure and recreation (art. 31).

Children deprived of their liberty or who are in conflict with the law are given special attention in articles 37 and 40; the former also prohibits torture, life imprisonment or execution of children.

The implementation machinery of the Convention (articles 42-45) is designed to give special emphasis to creating a setting for global cooperation and development in the realization of the provisions and ideals of the Convention.

Fourteen examples of improved rights

Among this vast array of provisions are many that constitute a significant upgrading of international norms applicable to children to date, as well as a number of interesting innovations in substance and approach. Several had their roots in the proposals put forward by the NGO Ad Hoc Group and UNICEF, and many were the result of government initiatives. The following are among the most notable improvements and additions to existing standards in this sphere.

The best interests of the child (art. 3): This article is fundamental to the whole Convention in that it stipulates that the child's best interests must be a *"primary consideration"* in all actions concerning children. Whilst the term *"best interests"* leaves room for interpretation, its inclusion as the guiding principle marks an important step forward in terms of the approach to be taken — to children as a group as well as in individual cases — when determining the most appropriate solutions to situations in which they find themselves.

From survival to adoption...

Survival and development (art. 6): The State's obligation to do everything possible to ensure child survival is a concept that has never before been recognised in international human rights law. It reflects the fact that special measures are required to prevent child mortality and disablement due to disease and malnutrition.

Preservation of identity (art. 8): This is another totally new obligation. Here the Convention underscores the child's right to name and nationality by the careful protection of the child's identity. The Working Group included this provision at the suggestion of one government in the light of mass "disappearances" of children whose identity papers had been deliberately falsified and family ties arbitrarily severed. The provision is intended to prevent the recurrence of this phenomenon anywhere in the world.

The child's opinion (art. 12): The right of the child not only to express an opinion but also to have that opinion taken into account in matters that affect him or her is a highly significant recognition of the need to give children a greater say in their own lives.

Child abuse and neglect (art. 19): The feature of special interest in this article is the emphasis placed on the prevention of intra-familial abuse and neglect, which has never previously figured in a binding instrument.

Adoption (art. 21): This article is of special importance because of the emphasis it places on the need for strong safeguards surrounding the adoption process — especially as regards inter-country adoption —

and the fact that it brings into this binding instrument principles that were adopted only three years ago by the United Nations in the framework of a non-binding declaration.

...health to education...

Health (art. 24): In addition to its explicit references to primary health care and to education regarding the advantages of breast-feeding as means of promoting access to the highest attainable standard of health, this article stands out because it mentions — for the first time in a binding international instrument — a State obligation to work towards the abolition of traditional practices, such as female circumcision and preferential treatment of male children, that have harmful consequences for children's health.

Periodic review of placement (art. 26): The obligation to review periodically all institutional placements designed to ensure the care, protection or treatment of children, in order to determine whether or not they are still appropriate, responds to a recently-voiced concern and, again, has never previously figured in a human rights instrument.

Education (art. 28): The novelty here is that, whilst corporal punishment is not explicitly outlawed, there is reference to the fact that school discipline must be administered *"in a manner consistent with the child's human dignity"*, another "first".

...and drug abuse to awareness-building

Drug abuse (art. 33): This is the first time that specific mention is made of the need for protection of children from drug abuse and from being used in the production and distribution processes of illicit substances.

Deprivation of liberty (art. 37): The aspect of special note in this article is the inclusion of the principle that deprivation of liberty must be looked upon as a last resort and, if it is nonetheless ordered, must be limited to the shortest possible period of time.

Rehabilitative care (art. 39): An important addition to the body of children's rights is this article which places an obligation on States to promote adequate treatment for children harmed physically or psychologically as a result of violations of their right to protection, in particular, from exploitation and cruelty.

Administration of juvenile justice (art.40): Many of the essential principles of the 1985 UN Standard Minimum Rules for the Administration of Juvenile Justice — a non-binding instrument — have been incorporated into this article, the longest and most detailed of the whole Convention, with the result that international norms in this sphere have been significantly upgraded.

Making the Convention known (art. 42): Strictly speaking, this article comes under the implementation provisions of the Convention. It is well worth highlighting here, however, because it is the first time that specific and explicit recognition has been given to the need for children themselves to receive information on their rights. This is a further indication of the gradually changing attitude towards children that, overall, this Convention both reflects and helps to foster.

As noted previously, this should not be seen as an exhaustive list of the improvements that the Convention brings to children's rights standards. Many others — including those dealing with minority children or indigenous children, the special needs of handicapped children, protection from all forms of exploitation, freedom of expression and association, to name but a few — could also validly be mentioned. With that proviso, however, it does demonstrate the considerable extent to which the Convention contributes to the struggle to improve practices and objectives in child welfare and protection. ■

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Document No. 4

The future Convention: From words to action

The implementation mechanism

No matter how innovative or progressive the Convention looks on paper, it will change nothing if the rights it contains are not put into practice. Whether anything is achieved by the Convention — in other words, whether the daily lives of children are actually improved by this treaty — depends on how it is implemented.

Like every other binding treaty, the future Convention on the Rights of the Child has a built-in implementation mechanism designed to ensure that States Parties' obligations are respected. Under this Convention, a Committee on the Rights of the Child is to be set up to consider reports submitted by governments regarding their compliance with the provisions of the text, together with information from other authorised sources. The Committee is to be composed of ten independent experts elected by States Parties and serving in their personal capacity. If it has concerns about any aspects of the reports or other information it receives, or if it wishes to respond to any difficulties that governments have identified as hampering their compliance, it will initiate dialogue with officials of the country concerned in order to find a means of improving the situation. The specialised agencies and organs of the UN (such as UNICEF) will be entitled to be represented at meetings of the Committee, which may call on them, together with other competent bodies (including recognised NGOs) to provide expert advice.

The emphasis on cooperation

This gives the Committee a rather unusual thrust as compared to its counterparts for other human rights treaties: the emphasis is clearly more on facilitating compliance — in part through fostering international cooperation — in a non-confrontational atmosphere than on denunciation and "finger-pointing". This is an undoubtedly positive move. It means in particular that governments should not be prevented from ratifying the Convention simply because there are areas in which they are unable to comply at present due to financial limitations. As a result, the potential for wide ratification, vital for greatest possible impact, is unusually great. At the same time, this does not imply that the Committee has been divested of a monitoring role. It notably retains the right to request further information from States Parties, recommend that studies on specific issues be undertaken, and submit to the UN General Assembly comments and suggestions regarding States' reports.

The clear aim of fostering cooperation through the Committee is a logical extension of the fundamental spirit in which the Convention has been formulated. It reflects, for example, the explicit call for cooperation among States on certain specific issues, such as the exchange of information on methods of education and treatment for mentally and physically handicapped children (art. 23).

A significant obligation placed on States Parties in the context of implementation is that they make their reports to the Committee widely available to the general public in their own countries. This should foster public discussion on the content, and therefore serve as a stimulus to optimal realisation of the rights contained in the Convention.

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The "informal" contribution

Although implementation is clearly the formal and ultimate responsibility of those individual governments that ratify it, this does not mean that the inter-governmental organisations and the non-governmental community — international, national and local — have little or no role to play. Similarly, whilst the official monitoring body will be the Committee of experts, the non-governmental sector in particular will also surely need to be active in keeping track of governments' compliance with the rights set out in the Convention. Indeed, as noted above, the implementation mechanism contained in the Convention itself already recognises certain contributions that these other bodies can make.

Any consideration of translating "words into action", therefore, must take full account of the important "informal" contribution to be played by outside bodies; this reality does not apply only to the Convention on the Rights of the Child, but is common to all human rights treaties.

Promoting awareness

One of the obligations on States Parties will be to make the rights granted by the Convention widely known, to adults and children alike. This is an essential task. Awareness of one's own and other people's rights is fundamental to ensuring the most favourable conditions for their respect. However, that obligation — which will no doubt anyway have to be supplemented in particular by efforts on the part of national NGOs — only comes into effect, of course, once a State ratifies the Convention. Making its provisions known before that time is at least equally important. In that way, sufficient public support can be aroused precisely in favour of their government proceeding to ratification. This is clearly an "implementation-related" function that should be — and in many cases is already being — taken up as of now by concerned organisations at all levels.

Efforts at the national level

It is obviously at the individual country level that efforts should be directed first and foremost. It is felt in many quarters that the establishment of national commissions or other groupings, acting as focal points on issues related to the Convention, would constitute a good basis for such efforts. These groupings could, according to each country situation, be non-governmental or mixed, and could take on the coordination of the various tasks involved in the effective promotion of the rights of the child : dissemination of information, monitoring, and fostering or providing appropriate responses to problems identified, in keeping with the principles underlying those rights. Professional associations whose members' work involves children should be particularly active here, and the media have a special role to play in keeping the issue of children's rights alive.

Building on international solidarity

Internationally, it will be important to foresee equally effective coordination, drawing no doubt on the positive experience acquired during the drafting of the Convention, which was marked by an unusual level of consultation and cooperation among and between NGOs, the inter-governmental agencies and individual governments.

It is vital, at both levels, that concrete action and assistance be made available when they form the basis for setting in motion adequate responses to particular problems identified through monitoring. This will no doubt often imply advocating for special importance to be granted to meeting children's needs, in view of the relative scarcity of resources. The very existence of the Convention, and its prominent position among international human rights instruments, should give such advocacy efforts unprecedented strength.

Whatever the initiatives that are finally decided upon, by individuals, local and national groups and the international community, they must all take account of an undeniable reality: the Convention is not unlike a motor car. If it is left standing idle in the drive-way, it serves no purpose other than ostentatious display. But if it is used, it becomes a vehicle — and in this case, a much-needed vehicle for improvement in the lives of children everywhere. ■

DCI/UNICEF Briefing Kit
THIRD EDITION — MAY 1989

The future United Nations

Convention on the Rights of the Child

Annex I

The NGO Ad Hoc Group on the Drafting of the Convention on the Rights of the Child

The following non-governmental organisations are active members of the NGO Ad Hoc Group:

Amnesty International
Anti-Slavery Society for the Protection of Human Rights
Associated Country Women of the World
Baha'i International Community
Defence for Children International
Friends World Committee for Consultation
Human Rights Internet
International Abolitionist Federation
International Alliance of Women
International Association for the Child's Right to Play
International Association of Democratic Lawyers
International Association of Juvenile and Family Court Magistrates
International Association of Penal Law
International Catholic Child Bureau
International Commission of Jurists
International Council of Jewish Women
International Council of Women
International Council on Social Welfare
International Federation of Business and Professional Women
International Federation of Women in Legal Careers
International Federation of Women Lawyers
International Federation of Social Workers
International Movement ATD Fourth World
International Social Service
Rädda Barnen
Redd Barna
Save the Children Alliance
World Association for the School as an Instrument of Peace
World Association of Girl Guides and Girl Scouts
World Federation of Democratic Youth — CIMEA
World Jewish Congress
World Organisation for Early Childhood Education
Zonta International

The NGO Ad Hoc Group decides on its proposals by consensus. Participating organisations therefore do not necessarily subscribe to every element of such proposals, but agree that the latter reflect the consensus reached. Representatives of UNICEF and of the International Committee of the Red Cross take part in the meetings of the Group as observers. UNICEF also provides logistical and other assistance to the Group.

THE DRAFT CONVENTION ON THE RIGHTS OF THE CHILD
Status in March 1989

Official text

PREAMBLE

The States Parties to the present Convention,

Considering that in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need for extending particular care to the child has been stated in the Geneva Declaration on the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the United Nations in 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in its article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child adopted by the General Assembly of the United Nations on 20 November 1959, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth,"

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85 of 3 December 1986); the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") (General Assembly Resolution 40/33 of 29 November 1985); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict (General Assembly Resolution 3318 (XXIX) of 14 December 1974),

Unofficial summary of main provisions

PREAMBLE

The preamble: recalls the basic principles of the United Nations and specific provisions of certain relevant human rights treaties and proclamations; reaffirms the fact that children, because of their vulnerability, need special care and protection; and places special emphasis on the primary caring and protective responsibility of the family, the need for legal and other protection of the child before and after birth, the importance of respect for the cultural values of the child's community, and the vital role of international cooperation in achieving the realization of children's rights.

Official text

Recognizing that in all countries in the world there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognizing the importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.

Article 2

1. The States Parties to the present Convention shall respect and ensure the rights set forth in this Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures, for the implementation of the rights recognized in this Convention. In regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Unofficial summary of main provisions

Definition of a child

All persons under 18, unless by law majority is attained at an earlier age.

Non-discrimination

The principle that all rights apply to all children without exception, and the State's obligation to protect children from any form of discrimination. The State must not violate any right, and must take positive action to promote them all.

Best interests of the child

All actions concerning the child should take full account of his or her best interests. The State is to provide adequate care when parents or others responsible fail to do so.

Implementation of rights

The State's obligation to translate the rights in the Convention into reality.

Official text

Article 5

States Parties shall respect the responsibilities, rights, and duties of parents or, where applicable, the members of the extended family or community as provided for by the local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality, and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Unofficial summary of main provisions

Parental guidance and the child's evolving capacities

The State's duty to respect the rights and responsibilities of parents and the wider family to provide guidance appropriate to the child's evolving capacities.

Survival and development

The inherent right to life, and the State's obligation to ensure the child's survival and development.

Name and nationality

The right to have a name from birth and to be granted a nationality.

Preservation of identity

The State's obligation to protect and, if necessary, re-establish the basic aspects of a child's identity (name, nationality and family ties).

Separation from parents

The child's right to live with his/her parents unless this is deemed incompatible with his/her best interests; the right to maintain contact with both parents if separated from one or both; the duties of States in cases where such separation results from State action.

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Official text

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 2, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order *(ordre public)*, public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) for respect of the rights or reputations of others; or

(b) for the protection of national security or of public order *(ordre public)*, or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

Unofficial summary of main provisions

Family reunification

The right of children and their parents to leave any country and to enter their own in order to be reunited or to maintain the child-parent relationship.

Illicit transfer and non-return

The State's obligation to try to prevent and remedy the kidnapping or retention of children abroad by a parent or third party.

The child's opinion

The child's right to express an opinion, and to have that opinion taken into account, in any matter or procedure affecting the child.

Freedom of expression

The child's right to obtain and make known information, and to express his or her views, unless this would violate the rights of others.

Freedom of thought, conscience and religion

The child's right to freedom of thought, conscience and religion, subject to appropriate parental guidance and national law.

Official text

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order *(ordre public)*, the protection of public health or morals or the protection of the rights and freedoms of others.

Article16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in this Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child care services and facilities for which they are eligible.

Unofficial summary of main provisions

Freedom of association

The right of children to meet with others and to join or set up associations, unless the fact of doing so violates the rights of others.

Protection of privacy

The right to protection from interference with privacy, family, home and correspondence, and from libel/slander.

Access to appropriate information

The role of the media in disseminating information to children that is consistent with moral well-being and knowledge and understanding among peoples, and respects the child's cultural background. The State is to take measures to encourage this and to protect children from harmful materials.

Parental responsibilities

The principle that both parents have joint primary responsibility for bringing up their children, and that the State should support them in this task.

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Official text

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment, and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, *inter alia*, foster placement, Kafala of Islamic law, adoption, or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties which recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) recognize that intercountry adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) ensure that the child concerned by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) take all appropriate measures to ensure that, in intercountry adoption, the placement does not result in improper financial gain for those involved in it;

(e) promote, where appropriate, the objectives of this article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Unofficial summary of main provisions

Protection from abuse and neglect

The State's obligation to protect children from all forms of maltreatment perpetrated by parents or others responsible for their care, and to undertake preventive and treatment programmes in this regard.

Protection of children without families

The State's obligation to provide special protection for children deprived of their family environment and to ensure that appropriate alternative family care or institutional placement is made available to them, taking into account the child's cultural background.

Adoption

In countries where adoption is recognized and/or allowed, it shall only be carried out in the best interests of the child, with all necessary safeguards for a given child and authorization by the competent authorities.

Official text

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in this Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance, and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote in the spirit of international co-operation the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) to diminish infant and child mortality,

Unofficial summary of main provisions

Refugee children

Special protection to be granted to children who are refugees or seeking refugee status, and the State's obligation to cooperate with competent organizations providing such protection and assistance.

Handicapped children

The right of handicapped children to special care, education and training designed to help them to achieve greatest possible self-reliance and to lead a full and active life in society.

Health and health services

The right to the highest level of health possible and to access to health and medical services, with special emphasis on primary and preventive health care, public health education and the diminution of infant mortality. The State's obligation to work towards the abolition of harmful traditional practices. Emphasis

Official text

(b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care,

(c) to combat disease and malnutrition including within the framework of primary health care, through *inter alia* the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution,

(d) to ensure appropriate pre- and post-natal health care for mothers,

(e) to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of, basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents,

(f) to develop preventive health care, guidance for parents, and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in this article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection, or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties in accordance with national conditions and within their means shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements as well as the making of other appropriate arrangements.

Unofficial summary of main provisions

Health and health services (continued)

is laid on the need for international cooperation to ensure this right.

Periodic review of placement

The right of children placed by the State for reasons of care, protection or treatment to have all aspects of that placement evaluated regularly.

Social security

The right of children to benefit from social security.

Standard of living

The right of children to benefit from an adequate standard of living, the primary responsibility of parents to provide this, and the State's duty to ensure that this responsibility is first fulfillable and then fulfilled, where necessary through the recovery of maintenance.

Official text

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) make primary education compulsory and available free to all;

(b) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) make higher education accessible to all on the basis of capacity by every appropriate means;

(d) make educational and vocational information and guidance available and accessible to all children;

(e) take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) the development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) the development of respect for the natural environment.

2. No part of this article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

Unofficial summary of main provisions

Education

The child's right to education, and the State's duty to ensure that primary education at least is made free and compulsory. Administration of school discipline is to reflect the child's human dignity. Emphasis is laid on the need for international cooperation to ensure this right.

Aims of education

The State's recognition that education should be directed at developing the child's personality and talents, preparing the child for active life as an adult, fostering respect for basic human rights and developing respect for the child's own cultural and national values and those of others.

Children of minorities or indigenous populations

The right of children of minority communities and indigenous populations to enjoy their own culture and to practice their own religion and language.

Official text

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to fully participate in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of this article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) provide for a minimum age or minimum ages for admissions to employment;

(b) provide for appropriate regulation of the hours and conditions of employment; and

(c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) the inducement or coercion of a child to engage in any unlawful sexual activity;

(b) the exploitative use of children in prostitution or other unlawful sexual practices;

(c) the exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Unofficial summary of main provisions

Leisure, recreation and cultural activities

The right of children to leisure, play and participation in cultural and artistic activities.

Child labour

The State's obligation to protect children from engaging in work that constitutes a threat to their health, education or development, to set minimum ages for employment, and to regulate conditions of employment.

Drug abuse

The child's right to protection from the use of narcotic and psychotropic drugs and from being involved in their production or distribution.

Sexual exploitation

The child's right to protection from sexual exploitation and abuse, including prostitution and involvement in pornography.

Sale, trafficking and abduction

The State's obligation to make every effort to prevent the sale, trafficking and abduction of children.

Other forms of exploitation

The child's right to protection from all other forms of exploitation not covered in articles 32, 33, 34 and 35.

Official text

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of their age. In particular every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social re-integration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and re-integration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's re-integration and the child's assuming a constructive role in society.

Unofficial summary of main provisions

Torture and deprivation of liberty

The prohibition of torture, cruel treatment or punishment, capital punishment, life imprisonment, and unlawful arrest or deprivation of liberty. The principles of appropriate treatment, separation from detained adults, contact with family and access to legal and other assistance.

Armed conflicts

The obligation of States to respect and ensure respect for humanitarian law as it applies to children. The principle that no child under 15 take a direct part in hostilities or be recruited into the armed forces, and that all children affected by armed conflict benefit from protection and care.

Rehabilitative care

The State's obligation to ensure that child victims of armed conflicts, torture, neglect, maltreatment or exploitation receive appropriate treatment for their recovery and social re-integration.

Administration of juvenile justice

The right of children alleged or recognized as having committed an offence to respect for their human rights and, in particular, to benefit from all aspects of the due process of law, including legal or other assistance in preparing and pre-

Official text

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions which were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) to be presumed innocent until proven guilty according to law;

(ii) to be informed promptly and directly of the charges against him or her, and if appropriate through his or her parents or legal guardian, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) if considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) to have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) to have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and in particular:

(a) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in this Convention shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

(a) the law of a State Party; or

(b) international law in force for that State.

Unofficial summary of main provisions

Administration of juvenile justice (continued)

senting their defence. The principle that recourse to judicial proceedings and institutional placements should be avoided wherever possible and appropriate.

Respect for existing standards

The principle that, if any standards set in national law or other applicable international instruments are higher than those of this Convention, it is the higher standard that applies.

Official text

Unofficial summary of main provisions

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of 10 experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two-thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at the United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

Implementation and entry into force

The provisions of articles 42 - 54 notably foresee:

(i) *the State's obligation to make the rights contained in this Convention widely known to both adults and children.*

(ii) *the setting up of a Committee on the Rights of the child composed of ten experts, which will consider reports that States Parties to the Convention are to submit two years after ratification and every five years thereafter. The Convention enters into force—and the Committee would therefore be set up—once 20 countries have ratified it.*

(iii) *States Parties are to make their reports widely available to the general public.*

(iv) *The Committee may propose that special studies be undertaken on specific issues relating to the rights of the child, and may make its evaluations known to each State Party concerned as well as to the UN General Assembly.*

(v) *In order to "foster the effective implementation of the Convention and to encourage international cooperation", the specialized agencies of the UN (such as the ILO, WHO and UNESCO) and UNICEF would be able to attend the meetings of the Committee. Together with any other body recognized as "competent", including NGOs in consultative status with the UN and UN organs such as the UNHCR, they can submit pertinent information to the Committee and be asked to advise on the optimal implementation of the Convention.*

N.B. Article 43 contains the only officially unresolved question in the present text of the draft Convention: whether the Committee on the Rights of the Child and its support staff should be financed from the general budget of the United Nations or by States Parties to the Convention. The square brackets around paras 11 and 12 of this article denote that agreement has not yet been reached on these provisions.

Official text

10 *bis*. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

11. [With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from the United Nations resources on such terms and conditions as the Assembly may decide.]

or

[States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.]

[12. States Parties shall be responsible for expenses incurred in connection with the holding of meetings of States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 10 *bis* of this article.]

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

(a) within two years of the entry into force of the Convention for the State Party concerned,

(b) thereafter every five years.

2. Reports made under this article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not in its subsequent reports submitted in accordance with paragraph 1 *(b)* repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly of the United Nations through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, UNICEF and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, UNICEF and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, UNICEF and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

Official text

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, UNICEF and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance along with the Committee's observations and suggestions, if any, on these requests or indications.

(c) the Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child.

(d) the Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of this Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that within four months from the date of such communication at least one-third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

Official text

2. An amendment adopted in accordance with paragraph (1) of this article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

Article 52

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

Done at this day of 198

BEST COPY AVAILABLE

This document is distributed as part of the Third edition of the "Briefing Kit" on The Future United Nations Convention on the Rights of the Child produced by Defence for Children International (DCI) and the United Nations Children's Fund (UNICEF) (May 1989).

DCI/UNICEF Briefing Kit
THIRD EDITION — MAY 1989

The future United Nations

Convention on the Rights of the Child

EARLIER THIS YEAR, the United Nations Commission on Human Rights approved the draft of the Convention on the Rights of the Child submitted to it by the Working Group set up ten years previously to formulate the text. The draft now goes before the UN General Assembly for consideration and, hopefully, adoption. Thus 1989 could be a very symbolic year for children, as the adoption of the Convention this year would be a fitting commemoration of the 30th anniversary of the Declaration of the Rights of the Child and the 10th anniversary of the International Year of the Child.

When it enters into force, this convention will set universally agreed standards for the protection of children and will provide an invaluable framework for advocacy on behalf of children and families, and for the development of programmes and policies that will ensure a healthier and safer future for children in every country in the world.

The United Nations Children's Fund (UNICEF) and Defence for Children International (DCI) are pleased to present this third edition of their Briefing Kit on the future Convention. The prospect of this Convention becoming a reality has already produced a level of interest and support — at all levels and throughout the world — that is probably unprecedented in the history of international human rights instruments. We hope that this kit will contribute to generating even more interest and to creating the most positive climate possible for the ratification and effective implementation of the Convention.

This kit exists in English, French and Spanish, and is available to governments, international organizations, mass media, national and community groups, as well as to interested individuals. The contents may be reproduced freely in the mass media or by groups wishing to translate all or parts of the kit into other languages. We would appreciate your comments and suggestions for using this material.

DCI and UNICEF gratefully acknowledge the support and technical advice of the United Nations Centre for Human Rights, and we would also like to thank the many Government and NGO representatives who have offered invaluable comments during the preparation of this material.

Nigel Cantwell
Director of Programmes
Defence for Children International (DCI)

Marco Vianello-Chiodo
Deputy Executive Director, External Relations
United Nations Children's Fund (UNICEF)